

REMARKS

Claims 1-16, 32-46 and 52-71 will be pending after entry of this amendment. Claims 17-31 and 47-51 have canceled. Claims 1-16 are withdrawn as directed to non-elected species, and new claims 52-71 have been added. Claims 32, 34, 39 and 40 have been amended. Claim 32 has been broadened to remove an unnecessary limitation. The claim has been amended to make clear that the port may be located in either the flow control layer or the fluid barrier. Further, the claim has been amended to more clearly define the relationship of the conduit to the insert. The amended and new claims find support in the original claims and throughout the specification; more particularly at paragraphs [0065] to [0073]. No new matter has been added.

Applicants affirm the election of the species IV concerning Figs. 7-8 made in view of the restriction requirement.

The foregoing amendments are taken in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicant would otherwise be entitled in view of the prior art.

By amending the application, the Applicants do not concede that the patent coverage available to them would not extend as far as the original claim. Rather, Applicants reserve the right to file a continuation application to pursue the breadth of the claims as filed. Applicants believe that the Examiner has not made a sufficient showing of inherency of the teachings of the asserted prior art, especially given the lack of teachings in the cited references of the properties that Applicants have recited in their claims.

Further, by the present amendment, it does not follow that the amended claims have become so perfect in their description that no one could devise an equivalent. After amendment, as before, limitations in the ability to describe the present invention in language in the patent claims naturally prevent the Applicants from capturing every nuance of the invention or describing with complete precision the range of its novelty or every possible equivalent. See, Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., 62 USPQ2d 1705 (2002). Accordingly, the foregoing amendments are made specifically in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicants would otherwise be entitled.

Rejections under 35 U.S.C. §102(e)

Examiner rejected claims 32-35, 37-39, and 42-44 under 35 U.S.C. §102(e) as being anticipated by U.S. Pat. No. 6,786,541 to Haupt et al. ("Haupt"). This rejection is traversed in view of the amendment to claim 32.

While they do not necessarily agree with the Examiner's characterization of Haupt, Applicants have accepted such characterization for the sake of argument. Even accepting the Examiner's characterization, Haupt fails to teach or suggest a conduit that extends across at least a portion of the insert. The Examiner identified item 20 in Fig. 3 of Haupt as a conduit. As shown in the figure, the conduit of Haupt connects to the spacer (item 18) at only a single location at the bottom of the spacer. In contrast, the

conduit in the present claims extends across at least a portion of the insert. For example, the conduit may be attached to the insert along a portion of its length (claim 34), the conduit may be located along an edge of the insert (claim 52), the conduit may extend into the seat portion of the insert (claim 54), or may be formed as part of the insert (claim 55). In addition, the conduit may be located in the plane of the insert (claim 56). Applicants respectfully request that this rejection be withdrawn.

In addition, Haupt does not teach or suggest both drawing ambient air and temperature conditioned air, as in claims 39 and 61, nor does Haupt teach or suggest the use of polymeric strand material in the spacer as in claims 59, 62, 70 and 71.

With regard to the Examiner's rejections of claims 33-35, 43 and 44, the Examiner has not identified where in the reference each of these aspects as taught. The Examiner's conclusory statements that the structures are shown are insufficient to provide the Applicants with the information necessary to form a response. Consequently, the Applicant respectfully request that such identification be made or the rejection withdrawn.

Rejections under 35 U.S.C. §103(a)

Examiner rejected claim 36 under 35 U.S.C. §103(a) as being obvious over Haupt. This rejection is traversed.

The Examiner's rejection is based on the theory that the placement of the conduit above the flow control layer is obvious because the Applicants did not state that such a placement solves any problem or is for a particular purpose. The Examiner's theory, however, is not a suitable basis for an obviousness rejection. The Examiner has the burden of identifying the motivation of a skilled artisan to modify the prior art to achieve the claimed invention. The Examiner appears to be improperly shifting the burden to the Applicants to justify the configuration of the conduit and flow control layer.

Nevertheless, the figures and the specification clearly show that placing the conduit above the flow control layer of the insert would permit air flow from the conduit across the surface of the insert and into the spacer, thus potentially shortening the distance the air flows, which would likely reduce the power needed to move the air. In any case, Applicants respectfully request that this rejection be withdrawn in view of the Examiner's failure to make a prima facie case of obviousness.

Examiner rejected claims 40-41 and 45-46 under 35 U.S.C. §103(a) as being unpatentable over Haupt and in further view of U.S. Patent No. 6,048,024 to Wallman ("Wallman") and U.S. Patent No. 5,117,638 to Feher ("Feher"). This rejection is moot in view of the amendment to independent claim 32. The references do not disclose each feature of the claim; namely, the conduct that extends across at least a portion of the insert. As discussed above, Haupt does not teach or suggest this feature. In addition, neither Wallman nor Feher remedy the failure of Haupt to teach or suggest this feature. Applicants respectfully request that this rejection be withdrawn.

Furthermore, neither Wallman nor Feher fill in the gaps of Haupt with respect to the features of claims 39, 59-62, 70 or 71.

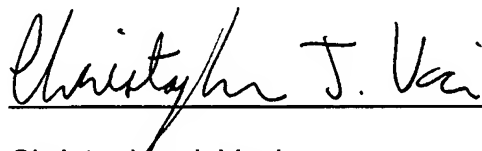
CONCLUSIONS

In view of Applicants' amendments and remarks, the Examiner's rejections are believed to be rendered moot. Accordingly, Applicants submit that the present application is in condition for allowance and requests that the Examiner pass the case to issue at the earliest convenience. Should the Examiner have any question or wish to further discuss this application, Applicant requests that the Examiner contact the undersigned at (248) 292-2920.

If for some reason Applicants have not requested a sufficient extension and/or have not paid a sufficient fee for this response and/or for the extension necessary to prevent the abandonment of this application, please consider this as a request for an extension for the required time period and/or authorization to charge Deposit Account No. 50-1097 for any fee which may be due.

Date: _____

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